

Letter of Findings: 01-20120180
Indiana Individual Income Tax
For the Tax Year 2009

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ISSUE

I. Indiana Individual Income Tax – Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayers protest the Department's proposed assessment for the 2009 tax year.

STATEMENT OF FACTS

Taxpayers (also referred to as "Husband" and/or "Wife") are individuals with a current Florida address. Taxpayers own a house in Indiana. Taxpayers also possess tangible personal property, including automobiles, in Indiana and the automobiles are properly titled and registered at the Indiana Bureau of Motor Vehicles. Additionally, Husband incorporated an Indiana company in 1999 and has been the president of the company since. The company was eventually acquired by a multinational company and became a subsidiary of that multinational company. Husband continues to work for the company as the president of that subsidiary located in Indiana.

In late 2008, Taxpayers purchased another house and additional vehicles in Florida. Subsequently, Taxpayers applied for the Florida homestead exemption for the Florida house and their Florida drivers' licenses. On April 15, 2009, Taxpayers timely filed their married-filing-jointly Indiana income tax return, IT-40 PNR, for the 2008 tax year. Taxpayer, however, did not file their 2009 Indiana income tax return. As a result, the Indiana Department of Revenue ("Department") issued a proposed assessment based on the best information available.

Taxpayers timely protested the assessments. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax – Residency.

DISCUSSION

The Department determined that Taxpayers failed to file their 2009 Indiana income tax return and that their Indiana income tax is due. Taxpayers, to the contrary, claimed that they are not required to file their 2009 Indiana income tax return and they do not owe any Indiana income tax because they are not Indiana residents.

As a threshold issue, all tax assessments are prima facie evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). The Internal Revenue Code requires taxpayers to report and pay their federal income tax when their gross income exceeds a certain amount. For state income tax purposes, the presumption is that the taxpayers properly and correctly file their federal income tax returns and, thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. Thus, IC § 6-3-1-3.5(a) provides the starting point for determining the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

IC § 6-3-2-2 further addresses issues of corporations and nonresidents; "adjusted gross income derived from sources within Indiana." Specifically, section (a) outlines what would be subject to Indiana income tax, which states:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that

the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

"Resident" is defined in IC § 6-3-1-12, which provides:

The term "resident" includes (a) **any individual who was domiciled in this state during the taxable year**, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state. **(Emphasis added).**

IC § 6-3-1-13 states, "The term 'nonresident' means any person who is not a resident of Indiana." [45 IAC 3.1-1-21](#) further states:

An Indiana resident is:

- (a) **Any individual who was domiciled in Indiana during the taxable year**, or
- (b) Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state; or
- (c) Any estate of a deceased person defined in (a) or (b) [subsections (a) or (b) of this section], or
- (d) Any trust which has a situs within this state. **(Emphasis added).**

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

The Indiana Supreme Court in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927) addressed the issue of whether a taxpayer, Mr. Walton, had a domicile in Indiana and whether his intangible property was subject to certain Indiana taxes because Mr. Walton had moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton in various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," ... "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" ... "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether

it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case....

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law....

To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely. Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18 (Ind. 1988). (Internal citations omitted) (**Emphasis added**).

In this instance, Taxpayers claimed that they are not required to file Indiana income tax for 2009 tax year and are not responsible for 2009 Indiana income tax because they became Florida residents in late 2008. To support their protest, Taxpayers provided additional documentation, including copies of Taxpayers' Florida drivers' licenses and excerpts of their federal and state returns showing Florida address. Taxpayers also submitted a letter, dated May 5, 2010, from the county Auditor's Office where Taxpayers' Indiana residence is located, acknowledging that Taxpayers wanted to file their homestead credit in Florida, as well as an e-mail correspondence regarding their October 5, 2010 request. Additionally, Taxpayers offered a copy of their membership certificate to a Florida golf & country club and copies of the monthly statements (bills). Taxpayers further submitted copies of their 2008 and 2009 Florida property tax statements, showing that they were allowed a homestead credit for 2009 in Florida.

Taxpayer is mistaken. Upon reviewing Taxpayers' documentation, its documentation demonstrates that they purchased a residence in Florida, properly insured, and filed their homestead credit in Florida beginning 2009. However, the county Auditor's Office in Indiana was not informed until May 5, 2010, and, thus, the homestead exemption for Taxpayers' Indiana residence remained for 2009 tax year. Additionally, Taxpayers have obtained Florida drivers' licenses and possibly purchased and owned automobiles in Florida. However, Taxpayers also retained their Indiana automobiles and their Indiana drivers' licenses. Thus, the question remains—whether, for the tax year at issue, Taxpayers were domiciled in Indiana and, therefore, considered as Indiana residents.

Similar to Mr. Walton's business activities in Michigan, in this instance, Husband continued to work as the president of the same company located in Indiana for the tax year at issue. Husband claimed that, for 2009, he worked from his Florida residence. But, in the company's filings with the state of Indiana, Husband remained at the same Indiana residence. The nature of Husband's employment requires Husband to maintain his contacts in Indiana, to carry an Indiana phone number, and to return to Indiana to perform certain necessary tasks.

Additionally, similar to Mr. Bayh who maintained a family ties in Indiana and Mr. Walton, who maintained a family ties in Michigan, Taxpayers here continue to own their Indiana home and tangible personal property including automobiles, which were properly registered with Indiana BMV. Taxpayers' Indiana address continues to be used for their important banking activities. For example, Taxpayers joined the golf & country club in Florida in late 2008 and the monthly statements (bills) for the 2009 tax year at issue were mailed to their Indiana residence. Wife made a payment by personal check, listing Taxpayers' Indiana residence as the address. Additionally, Taxpayers' documentation demonstrates that they spent some time in Florida during 2009; they also returned to Indiana several times during 2009 to be with family members.

As discussed above, "resident" includes any individual who was domiciled in this state during the taxable year. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." *State Election Bd. v. Bayh*, 521 N.E.2d, 1317-18. Thus, given the totality of the circumstances, in the absence of other supporting documentation, the

Department is not able to agree that Taxpayers met their burden of proof.

Finally, Taxpayers also argued that they did not have any Indiana sourced income, but the Department is not able to agree. Assuming that for 2009 Taxpayers effectively changed their domicile from Indiana to Florida, Taxpayers' documentation shows that Husband continues to work for the company located in Indiana as the president of the company. The company's filings to the state of Indiana for the year at issue listed that Husband resided in the Indiana residence. Thus, based on the information available to the Department, Husband worked in Indiana and Husband's compensation received from the company would have been Indiana source income and subject to Indiana income tax pursuant to above referenced Indiana law and regulations.

In short, Taxpayers remain obligated to file their 2009 Indiana income tax return and their income is taxable in Indiana.

FINDING

Taxpayers' protest is respectfully denied.

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